held that petitioners essentially sought the suppression of evidence. No circuit would permit immediate appeal on such facts. *Hubbard*,961 F.2d at 1243, 1245 (holding that the motion at issue was "not 'tied to a criminal prosecution in esse'" because the movant "ha[d] not yet been charged or indicted," but nevertheless dismissing an interlocutory appeal from a denial of the motion because the motion "was not 'solely for the return of property'"); *Erie*, 824 F.2d at 540-541 (same). Indeed, the Court recently denied review of this circuit conflict in *Andersen* v. *United States*, 538 U.S. 977 (2003), a case in which the Ninth Circuit had held that a criminal prosecution is "in esse" whenever a grand jury proceeding is underway, but nevertheless dismissed the appeal because the motion "[sought] relief beyond 'solely' the return of property." *Andersen*, 298 F.3d at 808.

There is no reason for a different result in this case. Review would be even more unwarranted here, where the court of appeals dismissed petitioners' appeal without explicitly addressing whether there existed a criminal prosecution in esse in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 2006